

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT
17.56.502 pertaining to reporting of )	
suspected releases )	(UNDERGROUND STORAGE
)	TANKS)

TO: All Concerned Persons

1. On October 23, 2008, the Department of Environmental Quality published MAR Notice No. 17-279 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 2232, 2008 Montana Administrative Register, issue number 20. On November 26, 2008, the department published a second notice of public hearing and extension of comment period on the proposed amendment of the above-stated rule at page 2416, 2008 Montana Administrative Register, issue number 22.

2. The department has amended the rule as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.56.502 REPORTING OF SUSPECTED RELEASES (1) Owners and operators, any person who installs or removes an UST, or who performs subsurface investigations for the presence of regulated substances, and any person who performs a tank tightness or line tightness test pursuant to ARM 17.56.407 or 17.56.408, must report suspected releases to a person within the Remediation Division of the department and the implementing agency or to the 24-hour Disaster and Emergency Services officer available at telephone number (406) 841-3911 within 24 hours of discovery of the existence of any of the following conditions:

(a) through (j) remain as proposed.

(k) activation of a leak detection equipment monitoring alarm, or activation of flow restriction mode for a mechanical line leak detector, unless:

(i) and (ii) remain as proposed.

(iii) records documenting the cause of the condition and the investigative and corrective actions undertaken in response to the condition are maintained for a three ~~one~~-year period at the facility, or at a readily available alternative site, where the records may be provided for inspection by the department upon request.

(2) remains as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: The commentor suggests that proposed (1)(k) is unnecessary and over-reaching because existing (1)(h)(i) addresses monitoring devices and release detection methods.

RESPONSE: Since there is no ARM 17.56.502(1)(h)(i), the department presumes the commentor meant to assert that proposed ARM 17.56.502(1)(k) is

unnecessary because existing ARM 17.56.502(1)(i) addresses the requirement to report a suspect release to the department when "sampling, testing, or monitoring results from a release detection method, required under subchapter 4, are inconclusive and cannot rule out the occurrence of a release, unless the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and subsequent monitoring, sampling, or testing indicates that the system is not leaking." The department agrees that, under the current rules, when a required release detection method indicates a possible release, owners and operators must notify the department and the implementing agency in accordance with subchapter 5. At present, this release notification requirement exists in both subchapters 4 and 5. Proposed ARM 17.56.502(1)(k) imposes a requirement to investigate and report a suspect release upon activation of any leak detection equipment warnings, alarms, or other abnormal equipment operation notifications, whether the alarm is attached to a required release detection method or not. Under the proposed amendment, (1)(k)(i) through (k)(iii), alarms that are activated by conditions that are investigated, corrected, and determined not to result in a release to the environment do not need to be reported to the department as a suspect release, so long as the cause of the alarm is investigated, discovered, and corrected, a release to the environment has not occurred, the leak detection system is returned to a fully operational condition within 24 hours, and the result of the investigation is documented. Proposed ARM 17.56.502(1)(k) is necessary and within the department's authority to adopt, amend, or repeal rules for the prevention and correction of releases from underground storage tanks (USTs). The proposed rule amendment is intended to prevent or mitigate damage to human health or the environment from releases by explicitly requiring that activation of any leak detection equipment alarm must be promptly addressed. The department has documented at least three significant releases to the environment where leak detection monitoring alarms were activated, the alarm was not promptly reported to the department, and the alarm was not properly acknowledged by the owner or operator. Under all of these scenarios, the amount of fuel released into the environment could have been drastically reduced if the owner or operator had complied with the requirements set forth in proposed ARM 17.56.502(1)(k). The department finds the proposed amendment necessary to strengthen existing release reporting requirements and ensure that releases are promptly reported, investigated, and abated.

COMMENT NO. 2: The commentor opposes the proposed requirement, in (1)(k)(iii), to maintain records related to leak detection equipment warnings and alarms for a period of three years as overly burdensome and above and beyond existing record retention requirements at ARM 17.56.409(2) and (3).

RESPONSE: Since there is no ARM 17.56.409(2) or (3), the department presumes the commentor meant to assert that ARM 17.56.409(1)(b) and (c) set forth a one-year retention period for records related to leak detection. Records related to leak detection equipment warnings, alarms, or abnormal equipment operation notifications support efforts to document, investigate, and promptly correct the conditions that cause or contribute to releases from UST systems. The department believes these records must be maintained for a period of time that will ensure the availability of the records to the owner, operator, department, tank and line tightness

tester, and compliance inspector to assist in documenting and investigating issues related to leak detection equipment operation and maintenance, and later-discovered releases to the environment. The commentor points out that ARM 17.56.409 (at (1)(b) and (c)) requires maintenance of release detection records for one year rather than three years. After considering the comment, the department will modify the record retention period at proposed ARM 17.56.502(1)(k)(iii) to require retention of records documenting the cause of the condition causing the alarm and any investigative and corrective actions taken in response to the alarm for a one-year period rather than a three-year period.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: /s/ Richard H. Opper

RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, January 5, 2009.